

METROPOLITAN AREA PLANNING COMMISSION

MINUTES October 22, 2009

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, October 22, 2009, at 1:30 P.M., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: G. Nelson Van Fleet, Chair; Debra Miller Stevens, Vice Chair; David Dennis; Darrell Downing; Shawn Farney; David Foster; Bud Hentzen; Hoyt Hillman; Bill Johnson; John W. McKay Jr., and M.S. Mitchell. Joe Johnson, Ronald Marnell and Don Sherman were absent. Staff members present were: Dale Miller, Current Plans Manager; Donna Goltry, Principal Planner; Bill Longnecker, Senior Planner; Derrick Slocum, Associate Planner; Bob Parnacott, Assistant County Counselor and Maryann Crockett, Recording Secretary.

-
1. Approval of the October 8, 2009 MAPC meeting minutes:

MOTION: To approve the October 8, 2009 minutes as amended.

MITCHELL moved, **MILLER STEVENS** seconded the motion, and it carried (11-0).

2. **CONSIDERATION OF SUBDIVISION COMMITTEE RECOMMENDATIONS**

3. **PUBLIC HEARING – VACATION ITEMS**

- 3-1. **VAC2009-35: City request to vacate the platlor's text to amend the types of uses allowed in a platted reserve.**

OWNERS/AGENT: USD 265, Goddard PEC, c/o Rob Hartman

LEGAL DESCRIPTION: Reserve A, Goddard School Addition, Wichita, Sedgwick County, Kansas

LOCATION: Generally located north of Kellogg Street/US-54, on the east side 167th Street West (WCC #V)

REASON FOR REQUEST: Allow drives, parking and recreation in platted reserve

CURRENT ZONING: All properties are zoned SF-5 Single-family Residential ("SF-5")

The applicant is requesting that the uses allowed in the 11.19-acre platted Reserve A, Goddard School Addition be vacated and amended. Currently the platlor's text identifies that Reserve A, is to be used for "...public drainage, landscaping, open space and public utilities confined to easements." The applicant requests the vacation to allow 0.95-acre of parking, 0.54-acre of drives and 1.95-acres of tennis courts. There are manholes, sewer and water lines in the platted reserve. The sewer line and the manholes appear to be covered by easements. Water is confined to easements dedicated by separate instrument; Film – Page(s) 29040532, 29040533, 29040534, and 29040535. The platted reserve is not located within any FEMA floodways or flood zones. There are not any franchised utilities located within the described reserve. The Goddard School Addition was recorded with the Register of Deeds July 11, 2005.

Based upon information available prior to the public hearing and reserving the right to make recommendations based on subsequent comments from City Public Works/Water & Sewer/Storm Water, franchised utility representatives and other interested parties, Planning Staff has listed the following considerations (but not limited to) associated with the request to vacate the platlor's text to amend the uses allowed in the described platted reserve with conditions:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time October 1, 2009, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the platlor's text to amend the uses allowed in the described platted reserves and the platted setback and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.

Considerations (but not limited to) associated with the request to vacate the platlor's text to amend the uses allowed in the described platted reserve have been identified, therefore, the vacation of the platlor's text to amend the uses allowed in the described platted reserve described in the petition should be approved with conditions:

- (1) Vacate the platlor's text, amending it by allowing parking, drives and tennis courts, or any otherwise approved acreage, in the platted Reserve A, Goddard School Addition, per approval by City Public Works, Water and Sewer, Storm Water, and franchised utility representatives. Retain public drainage, landscaping, open space and public utilities confined to easements. Provide all needed plans and subsequent approval of plans, including drainage and grading, for placement of parking, drives and tennis courts, prior to the case going WCC for final action, to ensure that there is no increase of drainage onto the abutting properties.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants and at the applicant's expense. If needed provide the necessary guarantees for relocation or reconstruction of utilities, including drainage.
- (3) Provide staff with any needed easements for relocated utilities or utilities located outside of easements, prior to the case going WCC for final action and subsequent recording of the easements with the Vacation Order, with the Sedgwick County Register of Deeds.
- (4) All improvements shall be according to City Standards and at the applicants' expense. If needed provide the necessary guarantees for improvements.
- (5) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Vacate the platlor's text, amending it by allowing parking, drives and tennis courts, or any otherwise approved acreage, in the platted Reserve A, Goddard School Addition, per approval by City Public Works, Water and Sewer, Storm Water, and franchised utility representatives. Retain public drainage, landscaping, open space and public utilities confined to easements. Provide all needed plans and subsequent approval of plans, including drainage and grading, for placement of parking, drives and tennis courts, prior to the case going WCC for final action, to ensure that there is no increase of drainage onto the abutting properties.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants and at the applicant's expense. If needed provide the necessary guarantees for relocation or reconstruction of utilities, including drainage.
- (3) Provide staff with any needed easements for relocated utilities or utilities located outside of easements, prior to the case going WCC for final action and subsequent recording of the easements with the Vacation Order, with the Sedgwick County Register of Deeds.
- (4) All improvements shall be according to City Standards and at the applicant's expense. If needed provide the necessary guarantees for improvements.
- (5) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds

MOTION: To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

MCKAY moved, HILLMAN seconded the motion, and it carried (11-0).

PUBLIC HEARINGS

4. **Case No.: ZON2009-31** – Request City zone change from SF-5 Single-Family Residential to TF-3 Two-Family Residential on property described as:

Lot 38, Block 1, Prairie Pointe Addition to Wichita, Sedgwick County, Kansas, generally located north of 37th Street North 1/3 mile west of Maize Road (10932 West 37th Street North).

BACKGROUND: This is a request for a city zone change from SF-5 Single-Family Residential (SF-5") to TF-3 Two-Family Residential ("TF-3"), generally located north of 37th Street North 1/3 mile west of Maize Road (10932 West 37th Street North). The applicant has a single-family residence and a garage with extra space for an office. He wishes to use the garage as the office for his home occupation, Vogt Construction. Home occupations cannot be operated out of a garage in the SF-5 zoning district, but can in the TF-3 zoning district. Restrictions apply to the types of home occupations allowed in TF-3 and this applicant would remain subject to these restrictions. In particular, an office is allowed but a construction yard for a construction sales and service operation is not.

The site is on a 0.93-acre tract developed prior to the platting and development of Prairie Pointe Addition, but the site was incorporated as a part of this addition. The house is located on the south side of the lot with a front setback onto 37th Street North. It has a common interior property line with residential lots in Prairie Pointe Addition on its east, north and west sides. A five-foot wall easement is located on this applicant's property along these three common property lines and a masonry wall is constructed within the wall easement. The 42' x 55' garage/accessory structure is located on the northwest corner of the lot, set about 15 feet from the north property line and 25 feet from the west property line. The building permit issued in 2007 (BLD2007-06702) documented that the applicant was applying for TF-3 zoning for the home occupation, that the building was a 2,310 square foot two-story accessory building with 25 feet as the total height and 392 feet of space on the second story, with a full bath and bedroom. The original house appears to have been constructed in 1961 and has 1,536 square feet of building coverage according to assessor's records.

The lots adjoining the property on the east, north and south are developed with single-family residences on property zoned SF-5 within the Prairie Pointe Subdivision. The property to the south is zoned R-1 Single-Family Residential in the City of Maize and is two acreages with single-family residences and farming operations. A property to the southeast is approved as the PUD #18 Royal Magnolia that allows for certain nonresidential development but is undeveloped.

CASE HISTORY: The property is platted as Lot 38, Block 1, Prairie Pointe Addition, recorded June 3, 2004.

ADJACENT ZONING AND LAND USE:

NORTH:	SF-5	Single-family residential
SOUTH:	R-1	Suburban residential/farming
EAST:	SF-5	Single-family residential
WEST:	SF-5	Single-family residential

PUBLIC SERVICES: The subject property has direct access onto 37th Street North, an urban minor arterial street. No traffic counts are available on 37th Street North. The road is a two-lane paved road from Maize Road to Manchester Street, then becoming an unpaved gravel road 1/8 mile east of this site. The jurisdiction of the right-of-way shifts between City of Wichita, City of Maize and Sedgwick County along the mile between Maize Road and 119th Street West. The site is connected to Wichita water and sewer.

CONFORMANCE TO PLANS/POLICIES: The "2030 Wichita Functional Land Use Guide, as amended May 2005" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "urban residential." TF-3 zoning is in conformance with this land use classification. The applicant's home occupation would be subject to the home occupation standards for its zoning district classification. No extra screening, buffering, landscaping or compatibility setbacks are triggered by a zone change from SF-5 to TF-3.

RECOMMENDATION: Based upon this information available prior to the public hearings, planning staff recommends that the request be APPROVED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The lots adjoining the property on the east, north and south are developed with single-family residences on property zoned SF-5 within the Prairie Pointe Subdivision. The property to the south is zoned R-1 Single-Family Residential in the City of Maize and is two acreages with single-family residences and farming operations. A

property to the southeast is approved as the PUD #18 Royal Magnolia that allows for certain nonresidential development but is undeveloped.

2. The suitability of the subject property for the uses to which it has been restricted: The property adhered to SF-5 zoning requirements until the applicant added the garage/accessory building in 2007, which triggered the need for the TF-3 zoning. The platting and addition of the masonry screening wall between this site and the adjoining residences helps screen the use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The operation of the home occupation will be more intensive as a TF-3 zoned property than as a SF-5 zoned property because the home occupation is allowed in the accessory building closer to the adjoining residences. The driveways to the site are directly from 37th Street North, which avoids traffic to the site passing through the residential neighborhood.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The “2030 Wichita Functional Land Use Guide, as amended May 2005” of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for “urban residential.” TF-3 zoning is in conformance with this land use classification. The applicant’s home occupation would be subject to the home occupation standards for its zoning district classification. No extra screening, buffering, landscaping or compatibility setbacks are triggered by a zone change from SF-5 to TF-3.
5. Impact of the proposed development on community facilities: The impact on the road and other public services will be minimal.

DONNA GOLTRY, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

MCKAY moved, **HILLMAN** seconded the motion, and it carried (11-0).

NON-PUBLIC HEARING ITEMS

5. Other Matters/Adjournment

5-1. Unified Zoning Code Amendment Request: Request to consider an amendment to the Unified Zoning Code dealing with recycling of used clothes.

Request to consider an amendment to the Wichita-Sedgwick County Unified Zoning Code (UZC) dealing with recycling of used clothes.

DALE MILLER, Planning Staff explained that the current UZC does not allow used clothing as a recyclable item.

BOB KAPLAN, AGENT FOR AMERICAN RECYCLERS said he and **JOHN GIBBONS** from **AMERICAN RECYCLERS**, Tulsa, OK, were present to answer any questions. He said they would like to be given an opportunity to suggest an amendment to the definition of recyclables for consideration by the Planning Department and then further consideration and recommendation by the Planning Commission. He said the current Code definition of recyclables excludes clothing, which is something very difficult for him to understand without getting into the issues of curbside recycling and public and private recycling stations. He said right now he was interested in finding out if the City Council will

ultimately allow an amendment to the zoning ordinance to permit the recycling of used clothing. He said it is done all the time and that there is nothing unique about recycling used clothing. He mentioned Goodwill Industries, Disabled American Veterans, Salvation Army, Once Upon a Child Second Hand Clothing Store, etc., and commented that a lot of people benefit from used clothing. He said today he would like the Commission's authority to direct staff to allow him to present discussion on some potential amendments to the definitions in the UZC which would be the removal of the exclusion of used clothing as a recyclable with any conditions the City may want to require. He mentioned that American Recyclers contributes to 75 different charities. He said he can't think of a single objection to recycling used clothing. He said maybe staff can explain why that exclusion was put into the ordinance because he does not understand it.

HENTZEN asked who J.R. Cox was.

KAPLAN said he believes J.R. Cox is in charge of Housing and Zoning in the City Office of Central Inspection (OCI).

HENTZEN asked how this provision regarding not recycling clothing got into the ordinance.

MILLER said he was not sure but he believes the provision has been in effect as long as the ordinance has been around and the City has had zoning since the early 1920's. He said he believes it might have had something to do with health issues that could be associated with used clothing.

HENTZEN said at one time all clothing was used.

MILLER said part of the issue is the manner in which Mr. Kaplan's client collects the clothing. He said under recycling collection stations (either public or private), recycling used clothing is prohibited. He said used clothing can be handled in a secondhand store or retail outlet. He said they are assuming that the initial prohibition against recycling used clothing may have to do with health and possibly fire issues.

HENTZEN clarified that it was an assumption on staff's part that the provision of the UZC had something to do with health.

MILLER said the provision has been in the Code for 30-40 years and the governing bodies have left it that way for a reason.

DOWNING asked if the clothes were collected and sent to a central location, and did MR. KAPLAN's client have a store.

KAPLAN said the clothes are collected and sent to a factory where they are cleaned and repaired, and those items that are beyond redemption are made into cleaning and polishing rags. He said everything is used zippers, buttons, etc., all of which are recycled. He said some of the items go overseas to people in need. He said this also prevents more items from going into the solid waste collection stream, since they collect well over one million pounds in Wichita a year.

DOWNING asked if his client had an outlet store like Goodwill.

KAPLAN said no, not to his knowledge.

DOWNING clarified so the wearable clothes are sent overseas?

KAPLAN said he thinks a lot goes overseas and added that the clothing gets utilized and doesn't go to the dump, which is a good thing. He said he believed it wasn't the mission of recycling but the curbside pickup that created some issues with the Office of Central Inspection. He said there are provisions in the

UZC for public and private recycling stations in Limited Commercial (LC) districts which were subject to Supplementary Use Regulations. He said they would like to get that definition amended.

DOWNING asked if this type of business required a permit and was there some requirement to indicate where pick up points may be authorized.

MILLER said he was not aware that this type of operation required a permit. He said the main issue with this particular operation was the collection boxes. He said if American Recyclers had a storefront for retail activity, there would be no need to change the Code. He said the boxes sitting out at curb side; not attended and not part of a retail activity is the issue.

MILLER STEVENS clarified that the issue was that the applicant does not have a drop off point where someone actively takes charge of the items. She asked how frequently the collection boxes are attended and emptied.

KAPLAN said American Recyclers picks up seven days a week throughout the City at every location.

HILLMAN asked if the business was a non-profit licensed to do business in the State of Kansas.

KAPLAN said he didn't know; he hadn't looked into their corporate structure. He said they were present today to seek an opportunity to discuss the proposed UZC amendment with staff. He said American Recyclers came into Wichita legitimately not understanding that there was a problem. He said American Recyclers has boxes in Texas and Oklahoma and so do other companies. He said there are different boxes with different colors and gave an example that a yellow box was for "Save the Planet." He said every community has these boxes, and that the City of Wichita just happens to have an ordinance prohibiting recycling used clothing.

HILLMAN commented that most of the groups Mr. Kaplan mentioned were non-profits that take donations directly. He asked if American Recyclers was registered to do businesses in the State of Kansas.

KAPLAN said he can't answer the question about licensing. He said American Recyclers contributes approximately \$2,500 a month to Child Start, which is a branch of the Head Start Program. He added that American Recyclers also buys items from charities such as Goodwill and the DAV to be used overseas or cut up for polishing cloths. He said they are doing a good thing and that he didn't think that could be argued. He said he would like the Commission to give him the opportunity to discuss the possible Code amendment with Staff and Staff the authority to draft a proposal.

MILLER STEVENS said she does not feel comfortable making a recommendation to review a zoning change. She asked if there was some other direction they could take to be better informed of the issues. She said she does not want to change the zoning code without further discussion on zoning issues related to exactly what is going on and reference information on how other zoning may be affected by this proposed change. She said there may be other repercussions from this proposed change.

MILLER said the item could be discussed in a workshop session. He said that way staff could provide information and answer questions so that the Commission was comfortable with the details and ramifications of the proposed Code change. He said that was one approach.

JOHNSON asked staff if the Commission grants a motion to look at this proposal, what happens next – a public hearing.

MILLER said the cleanest and simplest way to handle the request was to delete used clothing from prohibited recyclable materials; however, there may be other issues. He said once that is done and the

boxes are allowed as recycling /collection stations will the community care that there are, say six to eight, boxes scattered around competing for collections.

JOHNSON said this needs to be licensed or regulated in some manner. He suggested that a public hearing be scheduled once the information is available.

MILLER said staff can provide a simple, straight forward response and if that is the direction the Planning Commission wants to go, then the item would be advertised as an amendment to the UZC and scheduled to be heard at a MAPC Hearing.

JOHNSON asked who was notified about discussion of this item at today's meeting.

MILLER responded that this request was not a public hearing item; however, if people were present who wanted to speak on the issue, the Commission could allow that.

FARNEY clarified then OCI would police the boxes. He asked how many boxes were there and if OCI had the manpower. He commented that OCI needed to be involved.

KAPLAN said there were between 65-70 boxes in the community and that OCI has been actively monitoring them. He reiterated that public and private recycling stations are permitted in the LC district. He said if OCI has a problem with where the boxes are located, American Recyclers will remove them.

MITCHELL asked when the collection boxes began to appear and why OCI wasn't uncomfortable with them until recently. He asked why, what happened.

KAPLAN said the boxes have been present since approximately November 2008. He said a box was located in the wrong place and OCI received complaints about six month ago.

HENTZEN clarified that the County Commission passed on all Subdivision Regulations.

BOB PARNACOTT, COUNTY COUNSELOR, said yes, that the Subdivision Regulations were part of the joint Wichita-Sedgwick County Unified Zoning Code, which was approved by both governing bodies, the Wichita City Council and Sedgwick County Commission.

FOSTER asked staff if 30 days was enough time to investigate this matter.

MILLER said yes.

FOSTER asked if the City would incur any liability if this activity was allowed to continue while it was studied.

MILLER said he did not know the answer to that, but he thought it was similar to any other violation; that the City could let the use continue while it is under study.

DOWNING asked staff about the danger that if this is approved, this might explode into a multitude of containers put on various locations collecting things that are currently prohibited and could this become a much larger problem.

MILLER said there are multiple operators with boxes collecting things that are permitted today. He said he doesn't know if this is any bigger issue than it would be with any other material, other than the fire and health issues which may be the real reason recycling clothing was prohibited in the first place.

EMILY COMPTON, PRESIDENT AND CEO, GOODWILL INDUSTRIES OF KANSAS said they are concerned about these boxes. She shared several pictures of various red boxes located around Wichita. She said what was depicted on the pictures was one of the reasons they are supportive of keeping clothing excluded as a recyclable. She said many years ago Goodwill used to have boxes in the community but because of problems with people piling things other than clothing around the boxes, Goodwill removed the boxes. She said for Goodwill it gets down to a community quality of life issue. She said American Recyclers may be collecting from centers every day but if they collect at 1:00 p.m. there is nothing stopping someone from dropping off mattresses and/or appliances at the box at 1:15 p.m. She said another concern was when people give to Goodwill, Salvation Army, and DAV and other locations that have retail operations, those donations are helping to create jobs and profits that stay here in Kansas and that is important. She said she believes if this is allowed there is a good chance that more bins will spring up. She said there could be a rainbow of boxes on various city corners that could get to be pretty unsightly.

HILLMAN clarified that Goodwill Industries did more business than just in Wichita and asked if any other communities placed guidelines on their business.

COMPTON said no other communities placed guidelines on their business.

MCKAY asked how Goodwill picks up their clothing.

COMPTON said contributed items are brought directly to Goodwill Stores and that they don't have trailers or boxes out in the community. She said donors get receipts and items are placed in a secure area. She said sometimes when employees come to work, donations have been left outside and staff cleans them up immediately.

MCKAY clarified Goodwill Industries does not have a pick up system.

COMPTON responded that is correct.

KAPLAN clarified that they are not present to discuss the merits of his client's operation. He said they are present to discuss the opportunity to put together a presentation in which the Commission can determine the merits. He added that in other jurisdictions his client has not experienced a multitude of companies coming in with donation boxes. He said if the Supplementary Use Regulations are used, the City can put conditions on these boxes which will effectively control them. He said obviously not everyone is taking their clothing to Goodwill because his client picked up over one million pounds in Wichita last year. He said a lot of people are finding these boxes are convenient and accessible. He concluded by saying that he would like to defer discussion on merits of the matter and allow him to craft a plan so Planning staff can look at how this is going to be handled and make a recommendation to the Commission.

CHAIRMAN VAN FLEET asked staff what form of action the Commission should take.

BOB PARNACOTT said the Commission can direct staff to prepare a draft recommendation to change the language of the Code or some other form of amendment to the Code and bring the proposed Code amendment back to the Commission for discussion and action.

MCKAY referenced the pictures provided by **MS. COMPTON** and asked Mr. Kaplan if his client picks up all the items left at different locations.

KAPLAN said he was not going to stand there and say that people aren't taking advantage of the situation. He said for example property owners have a tenant move out and leave trash and furniture; he said they see the disposal box across the street and use that. He said if the City receives a complaint, and

his office is notified, the stuff is picked up immediately because they have crews on the street seven days a week.

DENNIS said he will not be supporting the motion. He said the red boxes are not adding to the City of Wichita, and although he understands Mr. Kaplan's point, he said the merits of the red boxes and changing the UZC are something that this should be considered as one issue. He said he doesn't know how changing the UZC to allow recycling of clothing can be divorced from the actual merits of what Mr. Kaplan's client is doing.

HILLMAN said he agreed.

MITCHELL said this appears to be another question of "free market" and said that a group has found a way to make money while benefiting many different organizations.

MOTION: To direct staff to take the matter under consideration and consult with Mr. Kaplan and come back with a recommended action to the Commission within 30 days.

VAN FLEET moved, **MCKAY** seconded the motion, and it carried (8-3).
DENNIS, DOWNING, and HILLMAN – No.

5-2. 2010 MAPC Hearing Calendar

MOTION: To approve subject to staff recommendation.

DOWNING moved, **MCKAY** seconded the motion, and it carried (11-0).

The Metropolitan Area Planning Department informally adjourned at 2:15 p.m.

State of Kansas)
Sedgwick County) ^{ss}

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2009.

John L. Schlegel, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)